IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6368 OF 2007

Sameer Narayan Nirgude & Ors..... ....Petitioners
V/s
Narayan Damodar Nirgude & Ors..... ....Respondents.

Mr.Avinash Fatangare, Adv. for the petitioner.

CORAM: A.P.DESHPANDE, J.
10/9/07

PC:

An order passed by the trial Court rejecting the application for amendment filed by the plaintiff is challenged by filing the present writ petition. The trial Court has considered the application and has reached a conclusion that the application is intended to delay and protract the trial of the suit. Plaintiff Nos.2' examination in chief affidavit is already tendered on record and the trial has commenced. Learned counsel for the petitioner submits that the suit is filed after 2002 amendment to Order 6 Rule 17 of C.P.C. Thus it is obligatory on the part of the petitioner to demonstrate that inspite of due diligence he could not have brought the facts on record prior to commencement of the trial. That has not been done. On the contrary trial Court has held that the plaintiff was permitted to amend the plaint once and the present application has been moved after seeking repeated adjournments and after the suit was fixed

for evidence. Perusal of the amendment application reveals that the petitioner wants to claim damages on the ground that during pendency of the suit the defendant has caused loss to the property by demolishing the internal wall. Particulars as to when the property is allegedly destroyed have not been given in the application. Perused the order. Same does not call for any interference in exercise of writ jurisdiction. Learned counsel for the petitioner has placed reliance on a judgment of the Supreme Court in the case of ***Rajesh Kumar Aggarwal & Ors.*** V/s ***K.K.Modi & Ors.***, (2006) 4 SCC 385. The same does not advance the case of the petitioner any further as the trial Court has found that the application has not been moved bonafide but has been moved with a view to protract and delay the trial. Hence writ petition is summarily dismissed.

10.9.07